STATE OF MICHIGAN
IN THE SUPREME COURT

**IN RE CERTIFIED QUESTION
FROM THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT**

KENNETH HENES SPECIAL PROJECTS PROCURMENT, MARKETING AND CONSULTING CORPORATION,

Docket No. 120110

Plaintiff-Appellee,

vs.

CONTINENTAL BIOMASS INDUSTRIES, INC.,

Defendant-Appellant.

PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF CONCERNING *PETERS v GUNNELL, INC.*

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DISCUSSION

On September 27, 2002, the Michigan Court of Appeals released the first published decision from a Michigan state court to address the issue of whether a "bad faith" requirement should be read into the Michigan Sales Representatives Commission Act. *See Peters v Gunnell Inc*, __ Mich App __ ; __ NW2d __; 2002 WL 31160032 (2002). (A copy of the *Peters* case is included herewith as Addendum A). In its analysis of the issue, the Court of Appeals followed the standards for statutory construction espoused by this Court in a number of its recent decisions. The *Peters* court began by examining the words used by the Legislature. *Peters, supra,* slip op at 5. Finding no express "bad faith" requirement, the Court went on to examine meaning of the word "intentional". *Id.* After consulting several dictionaries, the Court determined that nothing in the definitions it examined gave rise to an inference that a showing of "bad faith" was a necessary before penalty damages could be awarded under the SRCA. *Id.* The entire analysis of the *Peters* Court is as follows:

> B. Damages for intentional failure to pay under MCL 600.2961(5)(b)
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> Defendant also argues that the trial court erred in awarding plaintiff $16,204 in damages on the basis that defendant intentionally failed to pay plaintiff's commissions. Defendant claims that damages are recoverable under MCL 600.2961(5)(b) only when a principal fails to pay in bad faith. No Michigan case has considered whether recovery under the SRCA is dependent on the existence of bad faith. We find nothing in the SRCA to support defendant's contention that a principal's failure to pay commissions must be in bad faith before the double damages provision is applied to a delinquent principal.
>
> The SRCA does not mention bad faith or any other mental state of a principal. Defendant claims that the requirement of bad faith is presumed from the requirement that an employer "intentionally" fail to pay commissions. MCL 600.2961(5)(b). The term "intentionally" is not defined in the statute. Thus, it is appropriate to consult dictionary definitions to determine the

> meaning of the term. *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 470; 521 NW2d 831 (1994). Black's Law Dictionary (7th ed) defines "intentional" as "[d]one with the aim of carrying out the act." Similarly, *Random House Webster's College Dictionary* (2000) defines "intentional" as "done with intention or on purpose; intended." Nothing in these definitions leads to the inference that recovery under MCL 600.2961(5)(b) is dependent on a principal failing to pay in bad faith. See generally Gillary & Albus, *Michigan's Sales Representative Act Revisited – Again – Or, Does "Intentionally" Mean "In Bad Faith"?*, 2001 L Rev Mich St U Det C L 965.
>
> Gay testified that plaintiff was owed commissions, but defendant did not pay plaintiff due to cash flow problems and later withheld payment as a means of ensuring the return of show equipment. The letter terminating plaintiff's employment supports the finding that defendant withheld commissions due plaintiff in an effort to force plaintiff to return or account for all show equipment. This evidence makes clear that defendant's failure to pay the commissions due was not accidental or unintended. Under these circumstances, where the evidence establishes that defendant intentionally failed to pay plaintiff's commissions when due, plaintiff is entitled to $16,204.52, two times the amount of commissions due under MCL 600.2961(5)(a). MCL 600.2961(5)(b).

Peters, supra, slip op at 4-5.

Defendant-Appellant, Continental Biomass Industries, Incorporated (hereinafter "CBI"), recently submitted a brief to this Court criticizing the *Peters* decision for failing to consider policy arguments, failing to assign a contextual, legal definition to the word "intentionally", and failing to read a "bad faith" requirement into the SRCA. When the *Peters* decision is viewed in light of this Court's recent decisions, however, it becomes apparent that CBI's criticisms are unfounded. In fact, the *Peters* decision is quite consistent with many recent decision from this Court concerning the interpretation of statutes.

For instance, in *Stokes v Millen Roofing Co*, 466 Mich 660; 649 NW2d 371 (2002), this Court was called upon to interpret and apply various provisions of the Residential Builders Act,

MCL 339.2401 *et seq.*, and the Construction Lien Act, MCL 570.1101 *et seq.* The statutes in question forbid unlicensed builders from bringing an action to recover compensation for construction services and from filing a construction lien, respectively. Contrary to the statutes, the trial court employed equity to award damages of approximately $113,000 to a builder for installation of a slate roof, even though the builder was unlicensed. *Id.* at 677. The trial court's ruling was affirmed by the Court of Appeals.

Suggesting that some might find the potential penalties imposed on unlicensed builders by the Residential Builders Act and the Construction Lien Act "excessively punitive", and noting that good faith or the lack of it was irrelevant, the Michigan Supreme Court reversed the trial court's ruling. In doing so, the Court quoted the following language from the Court of Appeals:

> Regardless of how unjust the statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree.

Stokes, supra at 672 (quoting *Stokes v Millen Roofing Co*, 245 Mich App 44, 57-58; 627 NW2d 16 (2001), *rev'd* 466 Mich 660; 649 NW2d 371 (2002).

CBI's argument that the *Peters* court erred by refusing to account for policy considerations is clearly unfounded. The fact that CBI and other principals who intentionally fail to pay sales commissions may consider a penalty of up to $100,000 too harsh is irrelevant to the construction of the SRCA. Regardless of how unjust the penalty may seem to CBI, this Court has already stated that it is not the Court's place to read a "bad faith" requirement into a validly enacted, unambiguous statute that does not include such a requirement. Henes further submits

that it is not the Court's place to excuse principals from the SRCA's penalties simply because they may have acted in good faith when intentionally failing to pay commissions.[1]

The *Peters* decision is also consistent with other recent decisions from this Court. Earlier this year, the Court provided the following guidance concerning statutory construction:

> When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the statutory language. Undefined statutory terms must be given their plain and ordinary meanings. When confronted with undefined terms, it is proper to consult a dictionary.

Cox v Board of Hosp Managers, 467 Mich 1; 651 NW2d 356 (2002) (citations omitted). The Court also has clearly stated that courts engaged in statutory construction should not read words into a statute, nor should they rewrite or embellish statutes. *Byker v Mannes*, 465 Mich 637, 647; 641 NW2d 210 (2002). Additionally, the Court has noted that one of the primary goals of the law is "a legal regime in which the public may read the plain words of its law and have confidence that such words mean what they say and are not the exclusive province of lawyers." *Signton v Chrysler Corp*, 467 Mich 144, 163; 648 NW2d 624 (2002) (quoting *Robertson v DiamlerChrysler Corp*, 465 Mich 732, 756; 641 NW2d 567 (2002)).

Each of these cases further demonstrates that the *Peters* court did not err in its analysis and construction of the SRCA. The *Peters* court examined the language of the SRCA and consulted dictionaries, as directed by *Cox v Board of Hosp Managers*. The *Peters* court refused

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[1] The rejection of CBI's policy-based arguments is further supported by the Court's recent decision in *Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000), where the Court stated:

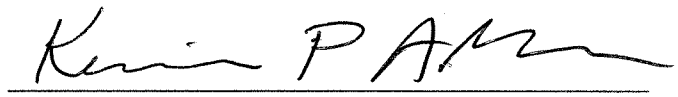
> Because our judicial role precludes imposing different policy choices than those selected by the Legislature, our obligation is, by examining the statutory language, to discern the legislative intent that may reasonably inferred from the words expressed in the statute.

to read a "bad faith" requirement into the Act, and refused to rewrite or embellish the Act to include such as requirement, as directed by *Byker v Mannes*. And, consistent with *Signton v Chrysler Corp*, the *Peters* court gave the word "intentionally" its plain and ordinary meaning, forgoing a context-specific, legalistic definition, such as the one suggested by CBI. By simply applying and enforcing the SRCA as it was written, the *Peters* court has contributed greatly to "a legal regime in which the public may read the plain words of its law and have confidence that such words mean what they say and are not the exclusive province of lawyers." *Signton v Chrysler Corp, supra.*

Throughout the litigation of this matter CBI has failed to offer any compelling reason why a bad faith requirement should be read into the SRCA. The rules of statutory construction repeatedly espoused by this Court make it clear that courts are to apply statutes as they are written by the Legislature, in accordance with the plain meaning of their express language. Courts are not to free to add provisions to statutes which were not included by the Legislature. Nor are they free to rewrite or embellish statutes based on policy considerations. As with any other statute, the SRCA should be applied and enforced pursuant to its express terms.

Respectfully submitted,

Randall J. Gillary, P.C.

By: 

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Date: October 25, 2002

ADDENDUM A

Peters v Gunnell Inc

STATE OF MICHIGAN

COURT OF APPEALS

NICHOLAS R. PETERS,

Plaintiff/Counter-Defendant-Appellee,

v

GUNNELL, INC.,

Defendant/Counter-Plaintiff-Appellant.

FOR PUBLICATION
September 27, 2002
9:10 a.m.

No. 230721, 231661
Tuscola Circuit Court
LC No. 98-017097-CK

Before: Zahra, P.J., and Cavanagh and White, JJ.

ZAHRA, P.J.

Defendant/counter-plaintiff Gunnell, Inc.[1] appeals as of right from a judgment for plaintiff and an order for attorney fees and costs. Defendant challenges the trial court's award of damages to plaintiff under the sales representatives' commissions act (SRCA), MCL 600.2961, the award on defendant's counter-complaint, and the award of fees and costs to plaintiff. We affirm.

I. Facts and Procedure

Defendant manufactures custom wheelchairs and related goods. In July 1996, the parties entered an Independent Sales Contractor Application and Agreement, whereby plaintiff agreed to serve as a regional sales representative for defendant. The contract provided the following with respect to commissions to be paid to plaintiff:

> A. Base Commission:
>
> 8% of all total Gunnell units, parts, etc. less shipping rebates, discounts, returns, show equipment, etc. Plus special quarterly bonus commission incentives based on meeting and exceeding quarterly and annual sales quota's [sic].
>
> * * *

[1] For ease of reference, Gunnell, Inc. and Nicholas Peters will be referred to as "defendant" and "plaintiff" respectively throughout this opinion.

C. The independent sales contractor will be paid base commission on a monthly basis, with bonus commissions paid quarterly.

Plaintiff claimed that defendant stopped providing monthly payments to him in late 1996. According to plaintiff, defendant eventually paid past due commissions in April 1997, but did not pay him for commissions that came due after that date. Records prepared by defendant and introduced below indicate that plaintiff was owed $8,102.26 commissions in February 1998. Plaintiff claimed he was owed at least that amount in commissions.

Defendant's president, Dwight Gay, admitted that defendant did not pay commissions earned by plaintiff because of cash flow problems. Gay further testified that defendant withheld the $8,102.26 amount due plaintiff because plaintiff failed to sell or return all "show equipment" that was in his possession.[2] Defendant's national sales manager, Cathy Castle, had sent a memo to all sales representatives in December 1996, instructing them to sell or return all old show equipment. Castle specified that fifty percent of the value of all show equipment one year old or older that had not been sold or returned by February 28, 1997 would be deducted from commissions. Castle's memo further stated that she would send representatives monthly statements to help track the equipment. Plaintiff asserted at trial that notwithstanding this December 1996 memo, it was not the general practice to require the return of equipment at the one-year mark or automatically deduct the value of the equipment from commissions at that time. Plaintiff testified that notwithstanding the memo, he was not sent monthly statements regarding his inventory of show equipment, that by the time his show equipment was one year old, Castle had left the company,[3] that in his numerous conversations with Gay regarding unpaid commissions, Gay continually identified cash flow problems as the reason the commissions had not been paid and never mentioned the show equipment, and that the show equipment did not become an issue until the litigation. Plaintiff offered contemporaneous notations from conversations with Gay to support the contention that Gay at all times cited cash flow problems as the reason for nonpayment. Gay offered no support for his assertion that he asked plaintiff to return show equipment in the summer and fall of 1997.

Gay drafted a letter to plaintiff in January 1998, stating that plaintiff's services were to be terminated effective February 28, 1998. That letter stated, in part: "When your show equipment account is settled, the balance of commissions due will be paid at that time." Plaintiff denied receiving this letter, and testified that the first time he saw it was at a deposition. Plaintiff testified that he continued representing defendant through May or June of 1998.

In August 1998, plaintiff filed the instant suit, alleging that defendant breached its sales commission agreement. Defendant filed a counter-complaint, seeking $16,037.60, the alleged value of unaccounted-for show equipment that was loaned to plaintiff.

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[2] The evidence establishes that "show equipment" includes samples of products that defendant provided to sales representatives for demonstration purposes.

[3] There is no evidence that as of February 28, 1997, plaintiff had any show equipment that was one year or more old.

A bench trial was held, after which the trial court ruled that plaintiff is entitled to $8,102 in commissions, plus $16,204 in statutory damages under the SRCA. The trial court further ruled that defendant is entitled to $1,000 in connection with its claim for missing show equipment. Plaintiff filed a motion for costs and attorney fees. The trial court granted that motion, ordering defendant to pay $7,387.50 in fees and costs. This appeal ensued.

II. Analysis

A. Actual damages under MCL 600.2961(5)(a)

Defendant argues that the trial court erred in awarding $8,102 in commissions under the SRCA. Issues of statutory interpretation are questions of law that we review de novo. *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 583; 624 NW2d 180 (2001); *Oakland Co Bd of Co Rd Comm'rs v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). Likewise, the interpretation of a contract is reviewed de novo. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Walters v Bloomfield Hills Furniture*, 228 Mich App 160, 163; 577 NW2d 206 (1999). We may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. *In re Schnell*, 214 Mich App 304, 310; 543 NW2d 11 (1995).

The SRCA provides, in pertinent part:

> (4) All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within 45 days after the date of termination. Commissions that become due after the termination date shall be paid within 45 days after the date on which the commission became due.
>
> (5) A principal who fails to comply with this section is liable to the sales representative for both of the following:
>
> (a) Actual damages caused by the failure to pay the commissions when due.
>
> (b) If the principal is found to have intentionally failed to pay the commission when due, an amount equal to 2 times the amount of commissions due but not paid as required by this section or $100,000.00, whichever is less.
>
> (6) If a sales representative brings a cause of action pursuant to this section, the court shall award to the prevailing party reasonable attorney fees and court costs. [MCL 600.2961]

Plaintiff claimed that he was owed at least $8,102.26 in commissions from his sales in 1997. Defendant's records of plaintiff's commissions state that the amount owed to plaintiff

through February 1998 was $8,102.26. According to defendant, plaintiff's employment was terminated as of February 28, 1998. There is no evidence that plaintiff received any of the commissions that defendant's own records establish were due him. In fact, Gay admitted that defendant withheld payment of the amount due plaintiff in an attempt to ensure return of defendant's show equipment. Under these circumstances, the evidence establishes that defendant failed to comply with MCL 600.2961(4), which requires payment of commissions that are due within forty-five days after the date of termination. Therefore, defendant is liable for actual damages caused by the failure to pay commissions when due. MCL 600.2961(5)(a). The evidence introduced below establishes that plaintiff suffered actual damages in the amount of $8,102.26. [4]

We reject defendant's argument that the value of unaccounted-for show equipment must be deducted from commissions that were due and owing plaintiff. "Commission" is defined by the SRCA as: "compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a percentage of the dollar amount of profits." MCL 600.2961(1)(a). As discussed, the SRCA provides that the principal must pay all commissions that are due within forty-five days of discharge. MCL 600.2961(4). The principal's failure results in liability for actual damages. MCL 600.2961(5)(a). Nothing in the SRCA suggests that it is necessary or proper for a principal to reduce commissions that are due by the amount of expenses that might later be deemed owed by a sales representative. "Nothing may be read into the statute that is not within the manifest intention of the Legislature as gathered from the act itself." *In re Juvenile Commitment Costs*, 240 Mich App 420, 427; 613 NW2d 348 (2000), citing *In re S R*, 229 Mich App 310, 314; 581 NW2d 291 (1998). The "Base Commission" provision of the parties' contract allows show equipment to be deducted when calculating commissions. However, the evidence establishes that defendant did not offset the amount of commissions plaintiff earned by the value of the unaccounted-for show equipment. To the contrary, at different points when plaintiff inquired with defendant regarding commissions owed in 1997, defendant's agent informed plaintiff that defendant was unable to pay commissions because of cash flow problems. Defendant's records indicate that plaintiff was owed commissions for the months of May 1997 to February 1998. Defendant admits it later withheld commissions owed plaintiff in an effort to recover costs associated with show equipment.[5] The SRCA plainly prohibits withholding commissions that are due. MCL 600.2961(4).

B. Damages for intentional failure to pay under MCL 600.2961(5)(b)

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[4] Plaintiff claimed at trial that he was owed *at least* $8,102.26 in commissions. However, plaintiff did not introduce any evidence to support a finding that he was due any additional amount of commissions or that he suffered any greater damage as the result of defendant's failure to pay his commissions when due.

[5] To the extent that the "Base Commission" provision of the parties' contract is ambiguous in regard to the timing of deduction of show equipment costs, defendant's claim that such costs were to be deducted prior to any commissions becoming due is inconsistent with the parties' prior practice and the trial court was free to reject defendant's interpretation.

Defendant also argues that the trial court erred in awarding plaintiff $16,204 in damages on the basis that defendant intentionally failed to pay plaintiff's commissions. Defendant claims that damages are recoverable under MCL 600.2961(5)(b) only when a principal fails to pay in bad faith. No Michigan case has considered whether recovery under the SRCA is dependant on the existence of bad faith.[6] We find nothing in the SRCA to support defendant's contention that a principal's failure to pay commissions must be in bad faith before the double damages provision is applied to a delinquent principal.

The SRCA does not mention bad faith or any other mental state of a principal. Defendant claims that the requirement of bad faith is presumed from the requirement that an employer "intentionally" fail to pay commissions. MCL 600.2961(5)(b). The term "intentionally" is not defined in the statute. Thus, it is appropriate to consult dictionary definitions to determine the meaning of the term. *Popma v Auto Club Ins Ass'n*, 446 Mich 460, 470; 521 NW2d 831 (1994). Black's Law Dictionary (7th ed) defines "intentional" as "[d]one with the aim of carrying out the act." Similarly, *Random House Webster's College Dictionary* (2000) defines "intentional" as "done with intention or on purpose; intended."[7] Nothing in these definitions leads to the inference that recovery under MCL 600.2961(5)(b) is dependant on a principal failing to pay in bad faith.[8] See generally Gillary & Albus, *Michigan's sales representative act revisited – again – or, does "intentionally" mean "in bad faith"?*, 2001 L Rev Mich St U Det C L 965.

Gay testified that plaintiff was owed commissions, but defendant did not pay plaintiff due to cash flow problems and later withheld payment as a means of ensuring the return of show equipment. The letter terminating plaintiff's employment supports the finding that defendant withheld commissions due plaintiff in an effort to force plaintiff to return or account for all show equipment. This evidence makes clear that defendant's failure to pay the commissions due plaintiff was not accidental or unintended. Under these circumstances, where the evidence establishes that defendant intentionally failed to pay plaintiff's commissions when due, plaintiff is entitled to $16,204.52, two times the amount of commissions due under MCL 600.2961 (5)(a). MCL 600.2961(5)(b).[9]

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[6] The Michigan Supreme Court has granted leave to consider the standard appropriate to evaluate statutory damages under the SRCA. *In re Certified Question from US Court of Appeals for Sixth Circuit (Kenneth Henes Special Projects, Procurement, Marketing and Consulting Corporation)*, 466 Mich 1206; 643 NW2d 578 (2002). As of the time of issuance of this opinion, the Supreme Court had not issued an opinion in the matter.

[7] "Intention" is defined as "an act or instance of determining mentally upon some action or result," and "the end or object intended; purpose." *Random House Webster's College Dictionary* (2000).

[8] Defendant cites the definition found in Black's Law Dictionary (4th ed), which includes the word "willful." Even if the term "intentionally" is considered in the context of willfulness, it does not lead to the conclusion that bad faith is included in the meaning of the term. A thing may be done willfully without bad faith.

[9] Defendant may argue that it is unfair to hold defendant to the double damage provision of SRCA where there exists factual questions regarding contractual set-offs. As stated, the trial court was free to reject defendant's argument that the show equipment costs were to be deducted prior to calculating commissions due because defendant's argument is inconsistent with the

(continued...)

C. Value of show equipment

Defendant also argues that the trial court erred in determining that defendant was entitled to $1,000 for unaccounted-for show equipment. We will not set aside a trial court's factual findings absent clear error. MCR 2.613(C). Clear error is found only when on review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Defendant's counter-complaint sought $16,037.60 in connection with the show equipment; however, defendant's December 31, 1997 list of "Representative Show Equipment" suggests that defendant considered only $4,000 worth of equipment to be missing. There was testimony that much of the equipment deemed missing, was eventually returned to defendant. Plaintiff claimed that only accessories without substantial value were missing. The Castle memo documents that the equipment loaned to plaintiff was to be discounted fifty percent. Under these circumstances, where the evidence supported the findings that much of the show equipment was returned to defendant and remaining equipment had a significantly reduced value, we cannot say that the trial court clearly erred in valuing the show equipment at $1,000. *Walters v Snyder, supra.*

D. Fees and costs

Defendant further argues that the trial court erred in awarding plaintiff attorney fees and costs. Defendant claims that plaintiff was not entitled to fees under MCL 600.2961(6) because he was not the "prevailing party." Alternatively, defendant claims that the trial court erred in ordering fees because plaintiff failed to move for costs within the time period specified by MCR 2.625(F)(2).

1. Fees to a prevailing party under MCL 600.2961(6)

The SRCA requires the court to award reasonable attorney fees and court costs to the prevailing party to a suit. MCL 600.2961(6). "Prevailing party" is defined in the SRCA as "a party who wins on all the allegations of the complaint or on all of the responses to the complaint." MCL 600.2961(1)(c). Defendant claims that plaintiff cannot be said to have prevailed in this case because the trial court awarded defendant a judgment on its counter-

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(...continued)

parties' prior practices. Whether the SRCA is "fair" in its application is not a matter of judicial concern where, as here, the legislative mandates are clear. Moreover, the SRCA reflects a legislative policy choice that courts cannot second-guess. By including the double damage provision in the SRCA the legislature intended for principals to quickly and equitably settle all accounts of terminated sales representatives. A principal who fails to resolve its accounts or who settles them erroneously does so at the peril of the double damage provision of the SRCA.

We further reject defendant's argument that a trial court has discretion not to award statutory damages under the SRCA. Nothing in the plain language of the statute supports this contention. The statute provides that the principal who fails to pay commissions "is liable" to the sales representative. MCL 600.2961(5). There is nothing ambiguous about the language of that subsection and we will not construe the provision as having greater meaning than what may be gathered from the language of the act itself. *In re Juvenile Commitment Costs, supra*; *Walters v Bloomfield Hills Furniture, supra.*

complaint and plaintiff alleged damages in excess of $25,000, but was found to have suffered actual damages in the amount of only $8,102.

Preliminarily, we observe that the legislature chose to severely limit the instances where reasonable attorney fees and costs are awarded, as evidenced by the requirement that a prevailing party win "on **all** the allegations of the complaint or on all of the responses to the complaint." MCL 600.2961(1)(c) (emphasis added). As observed by this Court in *Romska v Opper*, 234 Mich App 512; 594 NW2d 853 (1999), "'[t]here cannot be any broader classification than the word 'all,' and 'all' leaves room for no exceptions.'" *Id.* at 515-516, quoting *Calladine v Hyster Co*, 155 Mich App 175, 182; 399 NW2d 404 (1986). Thus, a party cannot be deemed a prevailing party entitled to reasonable attorney fees and court costs unless that party is found to have prevailed fully on each and every aspect of the claim or defense asserted under the SRCA.

We nonetheless reject defendant's argument that plaintiff cannot, as a matter of law, be said to have prevailed because his complaint sought damages in excess of $25,000, and the amount of actual damages awarded by the trial court was only $8,102.26. Contrary to defendant's argument, plaintiff never alleged in his complaint actual damages in excess of $25,000. Rather, plaintiff merely alleged under the jurisdictional allegations of the complaint that the amount in controversy exceeded $25,000. Also, plaintiff's prayer for relief sought an amount in excess of $25,000, and specifically requested that the amount be awarded pursuant to the SRCA's provisions for actual damages, double damages and reasonable attorney fees and costs. The fact that plaintiff is entitled to $8,102.26 in actual damages is not dispositive of whether he prevailed on all aspects of his claim such that he is entitled to an award of attorney fees and costs under MCL 600.2961(6). Plaintiff merely alleged that he was owed past due commissions and that the amount in controversy exceeded $25,000. When considering all of the statutory grounds for relief under the SRCA, we conclude that plaintiff prevailed on his jurisdictional allegation as well as on his claim for past due commissions.[10]

In regard to defendant's argument that attorney fees were improper because defendant received judgment on its counter-complaint, the SRCA makes no mention of counter-complaints. Rather, the subsection involving attorney fees and costs only refers to complaints brought by a sales representative under the act and responses to such complaints. MCL 600.2961(6). A response to a complaint relates directly to a plaintiff's cause of action, whereas a counter-complaint involves allegations wholly separate from the original plaintiff's action. Because the attorney fees provision of the SRCA relates only to prevailing on original causes of action under

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[10] Plaintiff received a total award of $31,693.78 under the statute; $24,306.28 in actual and double damages and $7,387.50 in attorney fees and costs pursuant to the SRCA. Jurisdictional allegations are not viewed in hindsight. Whether a jurisdictional allegation is satisfied is not determined by viewing the final proofs, but rather the party's good faith allegations at the time the complaint is filed. In this case, plaintiff claimed he was due at least $8,102.26 in actual damages and possibly more. Plaintiff also claimed statutory double damages and, thus, appropriately alleged an amount in controversy in excess of $25,000. Additionally, while costs and attorney fees generally are not considered part of an amount in controversy, the statute at issue expressly provides for attorney fees and costs. Plaintiff sought attorney fees as part of his claim under the SRCA. The SRCA not only provides for attorney fees and costs, but also requires that fees and costs be awarded to a prevailing party.

Plaintiff is entitled to $8,102.26 in actual damages, MCL 600.2961(5)(a), plus $16,204.52 resulting from defendant's intentional failure to pay commissions due, MCL 600.2961(5)(b). The trial court did not clearly err in finding that the value of the show equipment subject to defendant's counter-complaint was $1,000. The fees and costs awarded to plaintiff under MCL 600.2961(6) were proper.

Affirmed.

/s/ Brian K Zahra
/s/ Mark J. Cavanagh
/s/ Helen N. White